

(iv) Charging, or proposing to charge, for any service performed in connection with the issuance of any license, any fee wholly contingent upon the granting of such license and the amount or value thereof. This provision will not be construed to prohibit the charge of any fee agreed to by the parties; provided that the out-of-pocket expenditures and the reasonable value of the services performed, whether or not the license is issued and regardless of the amount thereof, are fairly compensated; and

(v) Knowingly violating or participating in the violation of, or an attempt to violate, any regulation with respect to the export of commodities or technical data, including the making of or inducing another to make any false representations to facilitate any export in violation of the Export Administration Act or any order or regulation issued thereunder.

(3) *Definition.* As used in this Administrative Order, the terms “practice before BIS” and “appear before BIS” include:

(i) The submission on behalf of another of applications for export licenses or other documents required to be filed with BIS, or the execution of the same;

(ii) Conferences or other communications on behalf of another with officers or employees of BIS for the purpose of soliciting or expediting approval by BIS of applications for export licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of BIS;

(iii) Participating on behalf of another in any proceeding pending before BIS; and

(iv) Submission to a customs official on behalf of another of a license or Shipper's Export Declaration or other export control document.

(4) *Proceedings.* All proceedings under this Administrative Order shall be conducted in the same manner as provided in part 766 of the EAR.

(b) *Employees and former employees.* Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the U.S. Government are subject to the provisions of 18 U.S.C. 203, 205, and 207 (Pub. L. 87–849, 87th Congress) in connection with representing a private party or interest before the U.S. Department of Commerce in connection with any export control matter.

[61 FR 12754, Mar. 25, 1996, as amended at 70 FR 54628, Sept. 16, 2005; 70 FR 62238, Oct. 31, 2005]

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

Sec.

738.1 Introduction.

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SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

SOURCE: 61 FR 12756, Mar. 25, 1996, unless otherwise noted.

§ 738.1 Introduction.

(a) *Commerce Control List scope.* (1) In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL) within the Export Administration Regulations (EAR), which includes items (i.e., commodities, software, and technology) subject to the export licensing authority of BIS. The CCL does not include those items exclusively controlled for export or reexport by another department or agency of the U.S. Government. In instances where agencies other than the Department of Commerce administer controls over related items, entries in the CCL contain a reference to these controls.

(2) The CCL is contained in supplement No. 1 to part 774 of the EAR. supplement No. 2 to part 774 of the EAR contains the General Technology and Software Notes relevant to entries contained in the CCL.

(b) *Commerce Country Chart scope.* BIS also maintains the Commerce Country Chart. The Commerce Country Chart, located in supplement No. 1 to part 738, contains licensing requirements based on destination and Reason for Control.

In combination with the CCL, the Commerce Country Chart allows you to determine whether a license is required for items on the CCL to any country in the world.

§ 738.2 Commerce Control List (CCL) structure.

(a) *Categories.* The CCL is divided into 10 categories, numbered as follows:

- 0—Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1—Materials, Chemicals, “Microorganisms,” and Toxins
- 2—Materials Processing
- 3—Electronics
- 4—Computers
- 5—Telecommunications and Information Security
- 6—Lasers and Sensors
- 7—Navigation and Avionics
- 8—Marine
- 9—Propulsion Systems, Space Vehicles and Related Equipment

(b) *Groups.* Within each category, items are arranged by group. Each category contains the same five groups. Each Group is identified by the letters A through E, as follows:

- A—Equipment, Assemblies and Components
- B—Test, Inspection and Production Equipment
- C—Materials
- D—Software
- E—Technology

(c) *Order of review.* In order to classify your item against the CCL, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate category on the CCL. Once the appropriate category is identified, you should match the particular characteristics and functions of your item to a specific ECCN. If the ECCN contains a list under the *Items* heading, you should review the list to determine within which subparagraph(s) your items are identified.

(d) *Entries—(1) Composition of an entry.* Within each group, individual items are identified by an Export Control Classification Number (ECCN). Each number consists of a set of digits and a letter. The first digit identifies the general category within which the entry falls (e.g., 3A001). The letter immediately following this first digit identifies under which of the five groups the item is listed (e.g., 3 A001).

The second digit differentiates individual entries by identifying the type of controls associated with the items contained in the entry (e.g., 3A001). Listed below are the Reasons for Control associated with this second digit.

- 0: National Security reasons (including Dual Use and Wassenaar Arrangement Munitions List) and Items on the NSG Dual Use Annex and Trigger List
- 1: Missile Technology reasons
- 2: Nuclear Nonproliferation reasons
- 3: Chemical & Biological Weapons reasons
- 9: Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

(i) Since Reasons for Control are not mutually exclusive, numbers are assigned in order of precedence. As an example, if an item is controlled for both National Security and Missile Technology reasons, the entry’s third digit will be a “0”. If the item is controlled only for Missile Technology the third digit will be “1”.

(ii) The numbers in either the second or third digit (e.g., 3A001) serve to differentiate between multilateral and unilateral entries. An entry with the number “9” as the second digit, identifies the entire entry as controlled for a unilateral concern (e.g., 2B991 for anti-terrorism reasons). If the number “9” appears as the third digit, the item is controlled for unilateral purposes based on a proliferation concern (e.g., 2A292 is controlled for unilateral purposes based on nuclear nonproliferation concerns).

(iii) The last digit within each entry (e.g., 3A001) is used for the sequential numbering of ECCNs to differentiate between entries on the CCL.

(2) *Reading an ECCN.* A brief description is provided next to each ECCN. Following this description is the actual entry containing “License Requirements,” “License Exceptions,” and “List of Items Controlled” sections. A brief description of each section and its use follows:

(i) *License Requirements.* This section contains a separate line identifying all possible Reasons for Control in order of precedence, and two columns entitled “Control(s)” and “Country Chart”.

(A) The “Controls” header identifies all applicable Reasons for Control, in order of restrictiveness, and to what